

Full title of law or regulation

Confianza Online Ethical Code (COEC). February 2022 version

<https://www.autocontrol.es/wp-content/uploads/2022/03/codigo-de-conducta-de-confianza-online.pdf>

Title of relevant section

This is an unofficial and non-binding translation of the key provisions (for our purposes, those most closely related to commercial communications) of the February 2022 version of COEC. Elements of the translation are 'official' in the sense that they are taken from the 2015 Confianza Online English version, where those clauses have not been amended. We have retained expressions that are not necessarily 'fluent' but convey the required meaning and are per the Confianza original.

We have translated only those clauses that relate most directly to commercial communications, though we have also included the full data protection section. 'Preamble' is not translated and neither is Title II Rules of Application and Chapter I Control Mechanisms as it sets out internal and external regulatory processes. In the e-Commerce section in particular, we have not translated articles 16 through 22, which address post-contract issues such as guarantees, delivery terms etc.

## TITLE I. SCOPE AND DEFINITIONS

Article 1. Subjective scope

This Code will be applicable to the entities affiliated to Confianza Online.

Article 2. Objective scope

1. This Code shall apply to matters affecting advertising, e-commerce, the protection of minors and personal data protection, in accordance with the provisions of the relevant sections of this Code, when conducted via electronic distance communications media.
2. With regard to data protection, this Code will be applicable to the data processing carried out by the adhered entities for the execution and development of online contracts with consumers, i.e. the processing for contractual purposes and /or that of advertising, such as, for example:
  - a) The execution of a sales contract for goods or the provision of digital content or services for which contracting has happened via electronic distance communications media, whether or not in exchange for an economic consideration.
  - b) The sending of commercial communications by electronic means.
  - c) Conducting promotions in the digital space in order to collect personal data to use for advertising purposes.
  - d) The use of cookies and/or equivalent technologies for the management and execution of contracts and services requested by users, the management of advertising spaces or the implementation of behavioural advertising.
  - e) Profiling for advertising purposes in the digital environment.
3. For its part, this Code shall apply to commercial advertising and to the protection of minors, in accordance with the provisions of the relevant sections of this Code, carried out by the Spanish public sector via electronic distance communications media. Similarly, the public sector whose consumer e-commerce transactions are governed by private law shall be subject to the rules of Title III, Chapter I of this Code.
4. This Code shall not apply to technical issues arising from signal transport -such as browsing speed or access to electronic communication networks - in consumer electronic contracts concluded for the provision of telecommunications services.
5. In the absence of an agreement, all the provisions contained in this Code that are applicable to consumer e-commerce will also be understood to be binding for e-commerce between companies, notwithstanding, in the event of an inconsistency between the rules of this Code and the applicable statutory regulations, the provisions of the latter will apply.
6. Similarly, the regulatory procedures for the out-of-court settlement of disputes between the adhered entities and consumers and/ or data subjects in matters of electronic contracting and data protection in relation to the former, or in matters of

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digital advertising and data protection in relation to the latter, the resolution of which shall be the responsibility of the Confianza Online Mediation Committee and the Autocontrol Advertising Jury respectively.

7. Similarly, the code regulates procedures for the out-of-court settlement of disputes between the affiliated entities and consumers and/ or data subjects in matters of electronic contracting and data protection or in matters of digital advertising and data protection, the resolution of which shall be the responsibility of the Confianza Online Mediation Committee in relation to the former, and the Autocontrol Advertising Jury in relation to the latter.

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### Article 3. Territorial scope

1. This Code will apply to private individuals or legal entities established in Spain or who have a permanent establishment in Spain and to those established outside Spain who are signatories to this Code, except in matters of data protection, which shall only apply to processing:
  - a) Conducted in the context of processing activities of member organisations established in Spanish territory or
  - b) That affects data subjects resident in Spain, provided that the processing is related to the offer of goods or services addressed to said data subjects in Spain, or to the monitoring of their behaviour in Spain.
2. For the purposes of this Code, it will be understood that an individual or legal entity is established in Spain when their residence or registered office is in Spanish territory, provided that these coincide with the place from which they run and manage their digital advertising and/or e-Commerce business activities. In turn, it is considered that an individual or legal entity operates from a permanent establishment in Spain when it disposes of continuous or regular installations or workplaces, where all or part of their interactive advertising and/or e-Commerce activities are carried out, in its territory.

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### Article 4. Definitions

For the purposes of this Code, the following definitions shall apply:

- a) **ADIGITAL**: Spanish Association of the Digital Economy.
- b) **AUTOCONTROL**: Association for the self-regulation of commercial communication.
- c) **AUTOCONTROL Advertising Code of Conduct**: Ethical rules applicable to all advertising communications activities whose aim is to promote, directly or indirectly, whatever the means employed, the procurement of goods or services, or the strengthening of brands or trademarks, as well as to any private advertisement issued on behalf of an individual or legal entity aimed at promoting certain attitudes or behaviours. Not applicable to political advertisements.
- d) **International Chamber of Commerce Code of Advertising Practice**: Through the self-regulation of business, the Advertising Code of Practice of the International Chamber of Commerce drives forward the highest ethical standards in advertising. It also provides sound business principles for consideration by governments when developing initiatives that affect marketing and consumer protection.
- e) **E-commerce**: any economic transaction involving the hiring of products and/ or services for payment between a member organisation and consumer in which the offer made by the member organisation and its acceptance by the consumer are carried out via an electronic distance communications medium.
- f) **Confianza Online Mediation Committee** (hereinafter, the Committee): is the body responsible for carrying out the mediation procedures between consumer claimants and companies that are the subject of complaint before the Technical Secretariat of Confianza Online. It is also the body in charge of supervising compliance with the Code's rules on data protection in consumer e-Commerce. The Committee operates under the rules of the Confianza Online Code of Conduct, as well as with its Internal Regulations, carrying out its activity under the principles of independence, impartiality and transparency.
- g) **Confianza Online**: association that promotes the Confianza Online Code of Conduct and whose purpose is to encourage and promote the use of a trustmark as an acknowledgement of commitments to self-regulation made by members from the

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different sectors of the Information Society in which the Association participates, including interactive advertising, purchases and contracts made online or through other electronic distance communications media, personal data protection in advertising and contracts made with consumers, and protection of minors.

- h) **Consumer:** for the purposes of contracts made through electronic media, the consumer shall be understood to be any individual or legal entity acting with a purpose unrelated to their commercial, business, craft or professional activity, with the sole purpose of satisfying their own private consumption needs as an individual. Consumers will also be legal entities and entities without legal personality acting not for profit in a field unrelated to commercial or business activity.
- i) **Cookies:** any type of file or data storage and retrieval device that is downloaded to a user's terminal equipment for the purpose of storing data that the entity responsible for its installation can retrieve for its use.
- j) **Affiliated entity:** natural or legal person, public or private, that expressly states its desire to subject its activity to compliance with the regulations established in this Code.
- k) **AUTOCONTROL Advertising Jury (hereinafter, the Jury):** is the independent body in charge of resolving claims about advertisements broadcast in Spain, which allegedly violate the ethical rules contained in the Advertising Code of Conduct, and/ or any of the current legislation. The Jury consists of renowned experts in the areas of law, commercial communication, the economy, etc. It carries out its activities according to the principles of independence and transparency and in line with the provisions of its Regulations. It is also the supervisory body for compliance with the rules of the Confianza Online Code of Conduct relating to data protection in digital advertising activity, in accordance with the rules of the Confianza Online Code of Conduct, as well as its Internal Regulations.
- l) **Mediator:** is the person designated by the Trust Online Mediation Committee to carry out the mediation procedure between the claimant consumer and the company that is the subject of the complaint.
- m) **Electronic distance communication media:** all those that enable the delivery of information society services.

For the purposes of this Code, those that do not meet the characteristics expressed above and, more specifically, the following, will not be considered to be electronic distance communication:

- Voice phone, fax or telex
  - Email or other equivalent electronic communication media for purposes unrelated to the advertising or economic activity of those who use it
  - Television broadcasting
  - Audiovisual media services, under the terms set out in Directive 2007/65 of the European Parliament and the Council of 11 December 2007 amending Directive 89/552/EC of the Council on the coordination of certain legal, regulatory, and administrative provisions of Member States concerning the practice of television broadcasting activities, known as the Audiovisual Media Services Directive amended by subsequent Directive 2010/13 of 10 March 2010.
  - TV teletext.
- n) **Minor:** any individual who has not reached the legal age of majority (18 years). For the purposes of obtaining consent for the processing of minors' data, the consent obtained by persons over fourteen years of age is understood to be lawful, while the consent of children under fourteen years of age will be unlawful when there is no consent of the holder of parental authority or guardianship.
  - ñ) **Supplier:** natural or legal person, public or private, who, in the regular practise of business activity, makes an e-commerce offer to the consumer(s).
  - o) **Confianza Online mediation procedure:** alternative dispute resolution procedure in consumer matters, both national and cross-border, relating to electronic transactions and carried out by the person appointed by the Confianza Online Mediation Committee. The procedure concludes with a settlement proposal that may result in a

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mediation agreement which the parties may make binding.

- p) **Advertising:** any communication made by an individual or legal entity, public or private, when carrying out a commercial, craft, or professional activity with the aim of promoting, directly or indirectly, the contracting of personal or real estate property, services, rights, and obligations or with the aim of promoting certain attitudes or behaviours. Not to be considered advertising for the purposes of this Code are the following:
- Information allowing direct access to the activity of a company, organization or person, and in particular the domain name or email address;
  - Commercial communications relating to the goods, services, or image of the company, organization, or person carried out independently, and, in particular, when these are made without economic consideration
  - Editorial content of websites, defined as all that which is not aimed at the promotion, either direct or indirect, of procuring goods, services, rights, or obligations.

This Code does not apply to institutional or political advertising. For these purposes, the term institutional advertising will be understood as laid out in Article 2 of Law No. 29/2005 of 29 December on Institutional Advertising and Communications.

- q) **National consumer claim:** claim arising from the purchase or contracting of goods or services by a consumer from a trader, when at the time the order is placed both have their residence and establishment in Spain.
- r) **Cross-border consumer claim:** claim arising from the purchase or contracting of goods or services made by a consumer from a trader, when at the time the order is placed the consumer has his residence in a Member State of the European Union other than that of the trader's establishment, which is based in Spain.
- s) **Rules of Procedure of AUTOCONTROL's Advertising Jury:** the rules developed by the Association for the Self-Regulation of Commercial Communications to arrange good governance and functioning of the Advertising Jury in terms of its organisation, functions, composition, and resolutions.
- t) **Internal Rules:** the set of rules that regulate the activity of Confianza Online, approved in implementation of the Association's Statutes, regarding its organisation and operation.
- u) **The Jury Secretariat:** Body responsible for the processing of claims in the areas of advertising and commercial communications.
- v) **Confianza Online's Technical Secretariat** (hereinafter Secretariat): Body responsible for the handling of inquiries, complaints, and claims made by users as well as the compliance of adhered members with the Ethical Code.
- w) **Confianza Online Seal** (hereinafter Seal): is the mark that is granted to the adhering entities and that allows them to be identified by their observation of this Code. It is a registered trademark, so its use is strictly limited.
- x) **Data processing for advertising purposes:** any processing as defined in Regulation (EU) 2016/679 of the European Parliament and of the Council, of April 27, 2016, on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), hereinafter GDPR, derived from or related to a communication made through electronic distance communication media, when carrying out a commercial, industrial, craft or professional activity, with the aim of promoting directly or indirectly the contracting of personal or real estate property, services, rights and obligations.

Other definitions: refer to the provisions of article 4 of the GDPR for the following definitions:

- Personal data;
- Consent of the data subject;
- Data subject;
- Data processor;

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- Data controller;
  - Processing.
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## TITLE II. RULES FOR THE APPLICATION OF THE CODE

This section of the code, on member and organisation process internally and externally, does not address commercial communications and has therefore not been translated.

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## TITLE III. MATERIAL SUBJECT TO THE CODE

### CHAPTER I. ELECTRONIC COMMERCE

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#### Article 14. Principle of legality in e- Commerce

The contracting activities of goods or services with consumers carried out through electronic distance communications media must respect current statutory regulations and, in particular, the values, rights and principles recognised in the Constitution

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#### Article 15. Requirements prior to the start of the contracting procedure

1. The affiliated entities that carry out commercial transactions with consumers via electronic distance communications media, before the start of the procedure for acquiring the good or contracting the service, must make clear, understandable and unequivocal information available to them on the steps to follow for the acquisition of the good or the contracting of the offered service, as well as on the possibility of filing and making available the contract formalisation document, the technical means available for identifying and correcting errors when entering data or for cancelling the contract procedure, as well as the language(s) of the contract when different from that of the information given prior to contracting. This obligation will be considered met when the affiliated entity includes the information on their website.  
However, when the affiliated entity designs its services to be accessed through devices with small screen sizes, the obligation described in the previous paragraph will be considered met if they provide the website where said information is made available to the recipient in a permanent, easy, direct, and exact manner.  
Affiliated entities are not obliged to provide the previously stated information when the contract is made through the exchange of email messages or other equivalent individual communication media.
  2. Prior to the initiation of the procurement of goods or contracting of services, and without prejudice to the information obligations of the advertiser in accordance with the rules contained in the AUTOCONTROL Advertising Code of Conduct, the affiliated entity must provide the consumer with access, at least via its website, to the general or specific conditions of contracting applicable in each case, so that they may consult, store and/ or print them. Similarly, the affiliated entity must inform the consumer, at least in Spanish and, in a visible and free way, about, as a minimum, the following points:
    - a) The identification of the entity, including its company name, as well as its office, phone number and email address. Likewise, when appropriate, other means of available online communication and that guarantee written correspondence with the consumer and in a durable medium must be stated, including the date and time of said correspondence. Where appropriate, the trader shall also provide the full address and identity of the entrepreneur on whose behalf the trader is acting.
    - b) The full price, with reference to applicable taxes, as well as currency, postage and shipping and, where appropriate, the increases or discounts and additional service charges for accessories such as, for example, financing, use of different means of payment or other similar payment conditions. If, due to the nature of the goods or services, the price cannot be reasonably calculated in advance or is subject to the preparation of an estimate, the method of determining the price and additional costs must be stated. If said costs cannot reasonably be calculated, their existence must be mentioned.
    - c) The period of the validity of the offer, if a promotional offer, as well as the number of units available if it is a 'flash'/ time-limited offer.
    - d) Terms, conditions, and payment methods, including where appropriate credit options as well as the existence and conditions of deposits or other financial guarantees the
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consumer has to pay for or provide.

- e) The different delivery or completion methods that may exist for products or services hired as well as, if the case, possible restrictions and/or the date on which the trader commits to deliver the goods or perform its contractual obligations
- f) Duration of the contract or, if it is indefinite or extended automatically, the conditions for resolution.
- g) Basic characteristics allowing for the identification of the goods or services as well as, where appropriate, the conditions required for use in reasonable relation to the goods, services, and medium used.
- h) Existence or non-existence of the right of withdrawal, presenting the conditions and costs for doing so, a model withdrawal form, and the rights of cancellation of or changes to the corresponding product or service. When goods by their nature cannot be returned by post, the cost of return must be stated.

*Example: for information on the right of withdrawal, the model provided in ANNEX IA of Royal Legislative Decree 1/2007, of November 16, which approves the revised text of the General Law for the Protection of Consumers and Users and other complementary laws can be used.*

- i) The applicable guarantees, including a reminder about the legal guarantee of conformity for goods and content or digital services, in addition to the conditions of after-sales services.
  - j) The location and method of presentation of possible claims and, when appropriate, the trader's claims processing system, including access to the out-of-court dispute resolution procedures and the codes of conduct that the entity observes. Similarly, there must be included on the website in a clear and easily accessible manner a link to the European Union's online dispute resolution platform, in accordance with the provisions of Regulation (EU) No. 524/2013 of the European Parliament and of the Council, of May 21, 2013 on online dispute resolution in consumer matters and amending Regulation (EC) 2006/2004 and Directive 2009/22/EC.
  - k) Language or languages in which the contract may be formalised if not the same as for the pre-contracting information.
  - l) Where applicable, the functionality of the content provided in digital format, including applicable technical protection measures.
  - m) Where relevant, any interoperability related to digital content with the devices and programmes known by the trader or that one may reasonably expect the trader to know of. Where relevant, any interoperability related to digital content with the devices and programs known by the trader or that one may reasonably expect the trader to know of.
3. When the acquisition or contracting of several products or services is allowed simultaneously, at the moment immediately prior to the acceptance or provision of consent for the acquisition of the goods or the contracting of the services, the consumer will have the right to review a summary of the so-called 'shopping cart' that includes, at a minimum, the list of the products requested or services they wish to contract, as well as the basic characteristics of the same allowing their identification, the total amount, the taxes applied and, if applicable, the shipping costs. In addition, the consumer must be able to store and/ or print said summary.
  4. The affiliated entity will obtain the express consent of the consumer regarding any additional charge to the remuneration agreed for the main contractual obligation. These additional costs must be presented in a clear and comprehensible form and the consumer must actively include them, without the option of their application as a default option that the consumer is required to reject.
  5. The affiliated entity must enable a button or similar function that displays the words "order with payment obligation" or a similar formula that is easily legible and unambiguous, in order to ensure that the consumer is expressly aware of the payment obligation involved in completing the order.

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16. Post-contract information obligations; 17. Delivery terms; 18. Withdrawal and return; 19. Guarantees; 20. Customer service; 21. Security and means of payment; 22. Public offers of electronic contracting between companies.

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## CHAPTER II. DIGITAL ADVERTISING

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**Article 23. Principle of legality in advertising** The advertising in electronic distance communications media of this Code's affiliated entities must be in accordance with the applicable law and with the AUTOCONTROL Advertising Code of Conduct as well as being being decent, honest and truthful, according to the terms in which these principles have been articulated by the International Chamber of Commerce Code of Advertising Practice.

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## CHAPTER III. DATA PROTECTION

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**Article 24. Principle of legality in personal data protection**

1. This Chapter has been prepared taking into account the regulations in force at the time of writing.
2. In the event of contradiction between the content of the same and the regulations in force at any given time, the provisions of the regulations in force shall prevail.

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**Article 25. Obligations of affiliated entities in their e-Commerce and advertising** The observation of this code requires entities to comply with data protection regulations in their e-Commerce and advertising activities and, in particular, the requirements set out in the following sections.

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**25.1. Data protection principles**

1. In the processing of personal data linked to their electronic commerce and advertising activity, the affiliated entities will respect the principles established in article 5 of the GDPR.
2. Likewise, they will comply with the data protection requirements by design and by default established in article 25 of the GDPR.
3. In relation to these principles, affiliated entities shall take into account the provisions of the following sections:
  - a) They will avoid collecting and processing more data than they need for the processing, preparation and delivery or completion of the sale of their goods or the provision of the requested services. In particular, if in the first instance the affiliated entity collected more data than necessary to complete an order because these additional data were required for a different purpose, when this other purpose has been dealt with, it will proceed to the suppression of those data that are not required to complete the order, without prejudice to the blocking commitment that the member entity may have with regard to these additional data.

*Example: An entity that is engaged in the sale of goods intends to use its customer database not only to manage orders, but also to be able to send, at a later point in time, electronic advertising to all buyers. In this event, once all the procedures related to the order have been completed, the entity will only keep that information of the data subjects that it needs in order to send them advertising electronically, and will delete or keep duly blocked all the data that is not necessary for this purpose, such as, for example, the data on the means of payment that has been used.*

- b) When they review orders and verify that there are errors that make it impossible to process an order and/ or begin a service, they will examine the reasons and, if these are because of incorrect contact details, they will suppress or, where possible, rectify the incorrect data.

*Example: The affiliated entity cannot deliver a product to the consumer's address because the system indicates that the destination postal address does not exist. In this case, the user can be contacted in order to correct the information and thus make the delivery.*

- c) They will inform about the retention period of the stored personal data, ensuring that said period is justified to allow the fulfillment of the purpose for which the data in question was collected and stored, without prejudice to the blocking derived from the

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fulfillment of other legal requirements.

*Example: The affiliated entity cannot delete the personal data of the data subject immediately after the delivery of the order because they are necessary to comply, for example, with legal obligations. But in this case, it will keep them blocked without being able to treat them for a purpose other than to comply with that obligation for the established time.*

- d) They will ensure the integrity and confidentiality of the personal data they collect and process, keeping them in protected environments with appropriate security tools and techniques such as data anonymisation and/or pseudonymisation. Similarly, they will use all the necessary measures to avoid any type of data theft or loss and will use techniques appropriate to the nature, scope and purpose of the treatment, conducting the appropriate risk analysis.

*Example: The affiliated entity intends to keep certain information on the sale in the system, such as the city or province of a delivery's destination and the purchase date. In this case, you must delete the data that makes the consumer identifiable, such as their name and surnames, being able to replace them with anonymised expressions, such as "customer" or "consumer", leaving the city or province and the date of purchase on your file.*

- e) They must retain proof of compliance with data protection regulations with regard to their electronic commerce and advertising activity.
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## 25.2. Legal bases of the treatments

1. Any processing of personal data that affiliated entities carry out in their electronic commerce or advertising activity must be established on one of the legal bases for processing provided for in article 6 of the GDPR.
  2. It is up to the member entities to determine in each case the appropriate legal basis for the purpose of the processing they intend.
  3. Below, however, are a series of principles that the affiliated entities must take into account with regard to the legal bases that, depending on the case, can legitimise the processing they carry out, depending on the purposes for which they process the data.
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### 25.2.1. Execution of a contract

1. When the entities use the completion of a contract as a legitimate basis for processing, they shall avoid using other legal bases that are inappropriate for this purpose and which may mislead the data subject.
2. It will not be necessary to include a specific box to obtain consent for the processing of data for the purpose of completing a contract other than the box for acceptance of the terms and conditions of the contract or service.

*Example: Some of the data processing that can be conducted in order to complete a contract would be that which is necessary to: manage the delivery of the ordered items to the address, manage exchanges or returns, offer requested digital content, provide a requested digital service, register on the website, attend to and manage customer service requests made through established channels of communication, manage incidents that may arise during the fulfillment of the order or the supply of the requested service, use and browse the website, app, social network profiles or other digital media.*

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### 25.2.2. Consent

1. When the entities use consent as a legal basis for the processing of personal data, they shall take into account the following:
  - a) If, within the framework of a contract whose completion does not require the sending of advertising, the affiliated entity subsequently intends to process the data in order to advertise electronically goods or services that are from another company or that are not similar to those initially the subject of contract, it will request the consent of the data subject for this purpose separately from the broad acceptance of the general conditions of the contract.

*Example: To obtain consent for the sending of advertising electronically of products or services of other companies or different from those that have been acquired, it may include, inter alia, a deactivated button or slider bar, a button with the term 'accept' or a specific box not visibly identified during the purchase process, such as, for example, next to the fields that*

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*the data subject must complete in the data request form, the contract signature box or the acceptance of terms box and general conditions of the contract.*

- b) The affiliated entity may not make the completion of an order conditional on the data subject consenting to the processing of their personal data for other purposes.

*Example: The data subject may not be inured to consent to the sending of advertising, other than commercial communications covered by article 21.2 of Law 34/2002, of July 11, on services of the information society and electronic commerce (hereinafter LSSI) offering the right to object, in order to carry out the normal processing of the order.*

- c) When it is planned to communicate personal data of the data subject that are strictly necessary for the progress and completion of the contract, their consent will not be required, although the affiliated entity must inform about these communications. In these cases, the affiliated entities will endeavour to report the existence of those in charge of processing by categories, without the need to identify each of them individually.
2. However, the affiliated entity, as data controller, must take the necessary measures so that data communication is done lawfully and securely, such as, among other guarantees, by signing the applicable contract with the data processor.

*Example: In general, when the subject's data is to be processed only for the purpose of completing the order, the affiliated entity may communicate the data, without the need to obtain consent, to service providers, for example, logistics, media payment, technological services, customer service, the sending of communications, marketing and advertising, insurance, claims management, credit, and fraud detection and prevention. In the event that these entities process the data for the development of their own services or other purposes, it will be necessary to obtain the consent of the data subject.*

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### **25.2.3. Compliance with legal obligations**

When entities deploy the need to comply with a legal requirement as the legal basis for processing, they will take into account the provisions of each of the regulations that cover said requirements, such as the legal requirements established in tax regulations, in criminal law on the issue of notification of possible criminal acts, in the regulations on information society services, in the consumer regulations on the care of legal or commercial guarantees or in regulations on the general product safety.

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### **25.2.4. Legitimate interest**

1. In cases where the legal basis of the treatment may be the satisfaction of a legitimate interest of the affiliated entity, the latter must conduct in each instance a balance between said interest and the interests or fundamental rights and freedoms of the data subjects, taking into account, among other circumstances, the reasonable expectations that the data subjects may have and the existence or otherwise of a contractual relationship.
2. Unless there is evidence to the contrary, it will be presumed that there is a legitimate interest in the following cases, although the affiliated entities must weigh whether their interest prevails over the interests or fundamental rights and freedoms of the data subjects in each specific instance according to the circumstances thereof and document it:
  - a) Prevent fraud;
  - b) Communicate data to other group companies that act as data processors, for internal administrative purposes such as billing;
  - c) Ensure the security of the network and the services provided;
  - d) Call recording to maintain the quality of the service and use the recordings for training purposes;
  - e) Conduct quality surveys and assessment of the products or services provided;
  - f) Analyse the use of the services supplied;
  - g) Perform customer segmentation based on the information provided directly by them (for example, age range, language or postal address) or preferences or purchase history or, finally, from public sources;
  - h) Exercise the legal actions that may pertain as a consequence of the conclusion and

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maintenance of the contractual relationship.

3. The affiliated entities will refrain from conducting processing for advertising purposes based on legitimate interest, when said advertising activity is conducted via electronic distance communications media. However, when they have obtained the data in a lawful manner, on the occasion of the conclusion of a contract, they may send advertising about their own products or services similar to those initially contracted, offering the right to object.

*Example: In order to assess whether the products or services are similar to those initially contracted, the types of these products or services within the corresponding sector of activity should be taken into account (e.g. food, beauty and hygiene, banking products and forms of payment, etc.)*

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### 25.3 Information on data processing

1. The affiliated entities will inform the data subjects of the processing of their personal data, specifying - depending on whether they obtain the data from the data subject or from a different source - the aspects included in articles 13 and 14 of the GDPR.
2. This information must be provided 'in a concise, transparent, intelligible and easily accessible form, using clear and plain language', as established by article 12 GDPR.
3. When fulfilling their duty to provide information, the affiliated entities shall take into account the following:
  - a) In the digital environment, when appropriate in order to improve transparency and avoid the data subject's fatigue, processing information may be provided in layers, with drop-down texts or other solutions that facilitate reading and understanding. With respect to the examples of first layer information below, it is assumed that the second layer contains the necessary information required by data protection regulations.

*- Example of first layer information for processing for the purposes of contracting (the data having been obtained from the data subject and with no profiling being conducted):*

"(Company name) is responsible for the processing of your data to complete your order. You can exercise your rights and obtain more information from this link [link to the second layer privacy policy]."

*- Examples of first layer information for processing for contractual and advertising purposes and of boxes to express the right to object or to consent, as the case may be:*

A. '(Company name) is responsible for the processing of your data to complete the order and to send commercial communications of products similar to those you have purchased. You can exercise your rights and obtain more information from this link [link to the second layer privacy policy]. If you do not wish to receive offers and promotions of our products similar to those you have purchased, tick this box .

B. '(Company name) is responsible for the processing of your data to complete the order and to send commercial communications about our products and other companies belonging to our business group called ..... You can exercise your rights and obtain more information by clicking on this link (link to second layer privacy policy).

If you wish to receive offers and promotions of our products aligned to your purchase history and use of our services, tick this box .

If you wish to receive offers and promotions of products from our group aligned to your purchase history and use of our services, tick this box .

C. '(Company name) is responsible for the processing of your data to complete the order and to send commercial communications about our products and those of other companies. You can exercise your rights and obtain more information from this link [link to the second layer privacy policy]. If you wish to receive offers and promotions of our products adapted to your history of purchases and use of our services, check this box.

If you wish to receive offers and promotions of products from other companies adapted to your history of purchases and use of our services, tick this box .

The affiliated entities, instead of using a box as a device for data subjects to express their objection or consent, as the case may be, may use other devices such as, for example,

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pressing a button with the statement 'Reject' or 'OK' or a button or slider.

- b) Processing information will be provided in clear and plain language, easy to understand for the people to whom it is addressed and avoiding unnecessary references to legal edicts, confusing jargon and ambiguous terms, or those with little meaning to recipients. In particular, alternatives will be explored so that these conditions are met when the recipients of the information may have different degrees of understanding.
- c) For illustrative purposes and for better understanding given its complex nature, Confianza Online recommends affiliated entities follow the guidelines set by the Spanish Agency for Data Protection, as well as observation of the examples published in the Guide for compliance with the obligation to inform. (Guía para el cumplimiento de la obligación de informar) :

<https://www.aepd.es/sites/default/files/2019-11/guia-modelo-clausula-informativa.pdf>

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**Article 26. Exercise of rights**

- 1. The affiliated entities will inform the data subjects about their rights of access, rectification, objection, deletion ('the right to be forgotten'), processing restrictions and portability and the right not to be the subject of automated individual decision-making, and will provide them with forms for the exercising of those rights. The use of these forms will be optional for the data subjects. Affiliated entities may use the forms included in the Annex (*not translated*) to this Code by way of example, adapting them to their specific circumstances.
- 2. The affiliated entities will attend to the rights of the data subjects without any form of obstacle, providing that the request is addressed to the affiliated entity and that it is possible to verify that the request comes from the data subjects.

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**Article 27. Obligations of the affiliated entities regarding the use of cookies and similar devices**

- 1. The use of cookies (including other similar devices) by the affiliated entities will be subject to the provisions of the Law on Information Society Services or the regulations that replace it.
- 2. For the use of cookies not excepted from obtaining informed consent in accordance with the regulations, the affiliated entities must obtain said informed consent in accordance with the provisions of the GDPR. In particular, the affiliated entities will take into account the following:
  - a) When describing the purpose of the cookies, ambiguous descriptions will be avoided.
  - b) The consent must in any event be express and, in the cases required by data protection regulations, explicit (therefore, in no circumstances will consent obtained under the 'continue browsing' formula be valid).
  - c) If third-party cookies are used, the data subject will be informed of this.
- 3. For illustrative purposes and for a better understanding given its complex nature, Confianza Online recommends that the affiliated entities follow the guidelines set by the Spanish Agency for Data Protection in their current version or later, as well as the use of the examples published in the Guide on the use of cookies.

<https://www.aepd.es/es/documento/guia-cookies.pdf>

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**Article 28. Publicity, dissemination and training actions for affiliated entities**

- 1. Entities affiliated to this Code will support initiatives to educate consumers on how to protect their privacy in electronic distance communications media.
- 2. Similarly, affiliated entities may participate in the training programmes that, in terms of data protection, are organised by the entities promoting the self-regulatory system. These programmes will be conducted periodically and will consist of sessions provided by data protection experts from the public and/ or private sectors.
- 3. The sessions will be organized paying special attention to the needs of small and medium-sized companies.

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**CHAPTER IV  
PROTECTION OF MINORS**

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<b>Article 29. Advertising and protection of minors</b>	<p>Advertising disseminated via electronic distance communications media shall not cause moral or physical detriment to minors, and shall thus comply with the following:</p> <ol style="list-style-type: none"> <li>a) Must identify content solely intended for adults.</li> <li>b) Must never directly encourage minors neither to buy a product or service, abusing their lack of experience or gullibility, nor to persuade their parents or guardians, or parents or guardians of third parties, to purchase products or services in question.</li> <li>c) The special trust of children in their parents, guardians, teachers, and other persons must never be abused.</li> <li>d) Children must never be, without good reason, placed in dangerous situations.</li> </ol>
<b>Article 30. Contents on protection of minors</b>	<ol style="list-style-type: none"> <li>1. Affiliated entities shall not include illegal content, declarations, or visual presentations on their websites that may threaten minors physically, mentally, or morally.</li> <li>2. In the event that affiliated members have areas or sections on their websites directed toward adults that may mentally, morally, or physically harm minors, these areas or sections must be correctly identified prior to browsing.</li> </ol>
<b>Article 31. Processing minors' data</b>	<ol style="list-style-type: none"> <li>1. For the processing of minors' data via electronic communications media, entities affiliated to this Code must take into account the age, knowledge, and maturity of their target audience. Under no circumstances may data concerning or relating to the economic situation or privacy of other family members be collected from the child.</li> <li>2. The affiliated entities may only process minors' data based on their consent when the data subject is over fourteen years of age, except for those specific cases in which the law provides for the assistance of the holders of parental authority or guardianship. In the case of data subjects who are under fourteen years of age, processing will only be lawful if the consent of the holder of parental authority or guardianship is recorded.</li> <li>3. Affiliated entities will request the data subjects who are under the age of fourteen to obtain the holder of parental authority or guardianship consent before supplying personal data online, and establish mechanisms which reasonably ensure, in accordance with technological developments, that the minor's age and the authenticity of their consent has been effectively verified.</li> <li>4. In addition to respecting the choice of the parental authority or guardian to limit online data collection through the tools available to them (such as, for example, parental control), affiliated entities will limit the use of data of children under fourteen years of age, when they intend to use such data for the sole purpose of advertising, selling products or providing services objectively suitable for minors.</li> <li>5. In no case may data pertaining to minors' be transferred without prior consent from the holder of parental authority or guardianship</li> <li>6. The holder of parental authority or guardianship may exercise in the name of and on behalf of minors under fourteen years of age the rights of access, correction, deletion, objection or any other rights to which they may be entitled, contacting the data controller by means of a system that enables their identity and form of representation to be verified.</li> <li>7. Affiliated entities will determine the most suitable technical and organisational and security measures for the processing and storing of minors' data, ensuring and being able to prove at all times that they have acted in accordance with the applicable regulations.</li> <li>8. The affiliated entities must offer the holders of parental authority or guardianship information on how to protect the privacy of their children or wards online, in order to protect the interests and fundamental rights of minors, and facilitating the learning of responsible use of digital devices and information society services.</li> </ol>
<b>Article 32. Promotion of the protection of minors</b>	<ol style="list-style-type: none"> <li>1. Affiliated entities that target minors shall make every effort to support initiatives proposed by the sector for the promotion of data protection for minors in advertising activities and electronic contracting as well as for raising awareness in the area, such as the creation of safe browsing systems and spaces, the development of educational websites and guides, and the creation of content filtering and classification systems.</li> </ol>

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2. Similarly, in these instances, entities affiliated to this Code shall make every effort to support initiatives that are carried out by other prestigious organisations to help inform parents or guardians how to protect the privacy of their child or ward online. This shall include information about access control tools and software for parents, which prevent children from sharing their name, address, and other personal data.
  3. Similarly, affiliated entities will make an effort to support training, dissemination and awareness initiatives regarding the responsible use of digital devices, as well as information society services by minors.
  4. Affiliated entities undertake to respect the recommendations that, beyond the provisions of this Code, are made from Confianza Online, as well as from the competent authorities in this matter.
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#### **ADDITIONAL PROVISION**

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Further rules for the implementation of this Code may be drawn up for specific issues related to interactive advertising, electronic contracting, protection of minors, protection of personal data, as required, which will be incorporated as sectoral annexes to this Code.

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#### **ADDITIONAL PROVISION II**

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For the purposes of the commitments of member companies, the agreements and conventions signed by Confianza Online and which will be published on the Association's website will be taken into account.

In any event, in the cases provided for in the agreements signed, the entities observing this Code will accept the submission to arbitration before the Consumer Arbitration Board of the Community of Madrid of the claims and requests for arbitration that have ended without an agreement between the parties in the procedure carried out by the Committee.

For these purposes, the observation of the companies to the Code will be considered unequivocal proof of the willingness of the companies to submit, in the terms indicated in the previous paragraph, to the Consumer Arbitration System in accordance with the arbitration procedure provided for in Royal Decree 231/ 2008, of February 15, which regulates the Consumer Arbitration System, or regulations that replace it.

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#### **FINAL PROVISION**

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This Code, which repeals the previous text dated May 2021, will be subject to periodic review at least every four years, in order to adapt it and keep it updated in relation to the changes that take place in society and the state/ development of technologies, as well as with legislative developments that occur in the matters so regulated.

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